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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,803	06/29/2001	Simo Maenpaa	TU1.P29	3378

7590 03/08/2004

RICHARDSON & FOLISE
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1200 Fifth Avenue
Seattle, WA 98101

EXAMINER

CROW, STEPHEN R

ART UNIT	PAPER NUMBER
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3764

21

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/894,803

Applicant(s)

MAENPAA, SIMO

Examiner

Steve R Crow

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-14 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 3-14 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____.

DETAILED ACTION

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 3-14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how the receiver (such as a Polar heart rate monitor) can determine the intensity of the signal. The applicant has presented a hypothetical use of such a receiver. What structure has been added to the receiver to permit it to recognize different signal strengths? The evidence submitted by applicant does discuss electromagnetic field intensity theory, but the examiner contends that one skilled in the art, given applicant's disclosure, would not be able to produce the invention as claimed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 3-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Huish et al or Trulaske.

Huish et al or Trulaske et al each show all of applicant's claimed structure, wherein a user has a Polar type heart rate monitor which transmits data to a microprocessor on the treadmill having control means which adjusts the speed and inclination of the treadmill in response to the signal. When the user is beyond the range of the receiver, no signal is received; therefore, the receiver is sensitive to the position of the user, hence, the receiver is responsive to the position of the user on the endless belt.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- I. Claims 3-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huish et al or Trulaske et al. in view of Shyu.

Huish et al or Trulaske et al utilize an electromagnetic sensor which broadly senses the position of the user on a treadmill as stated in the previous paragraph. Shyu teaches the use of electronic sensors for determining the position of the user on a treadmill. Given these teachings, it would have been obvious to one skilled in the art to utilize electromagnetic sensors to sense the discrete positions of the user on a treadmill in the manner performed and taught by the Shyu controller for user safety purposes.

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5. Claims 3-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potash et al in view of Huish et al or Trulaske.

Potash et al discloses an adaptive treadmill having an ultrasonic range finder located on the treadmill and for sensing the location of the user on the treadmill to respond in an appropriate manner to change the speed and/or slope.

Huish et al and Trulaske each teach the use of a transmitter which transmits a signal to a receiver located on the treadmill which then uses a controller to control and operate the treadmill belt speed and inclinations. Given these teachings, it would have been obvious to one skilled in the art to modify the Potash et al treadmill by substituting an electromagnetic signal generating/receiving means for the ultrasonic range finder as an equivalent means for sending and receiving user position data for user safety purposes.

Response to Arguments

6. Applicant's arguments filed 1-12-04 have been fully considered but they are not persuasive.

7. The examiner contends that the Huish et al and Trulaske devices still meet the claimed invention. They employ Polar type heart rate monitors which transmit an electromagnetic signal to the treadmill. These systems primitively control the treadmill depending upon where the user is located. When the user is too far away from the receiver (but still on the treadmill), a signal is not received and when the user is within the receivable range of the receiver, the signal is picked up; therefore, there are two

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field strengths detected: 1-within range, and 2- out of range. The treadmill is then broadly controlled by the user location thereon.

8. Note Huish's microprocessor 25. Note Trulaske's controller 30. Both devices detect a signal which is dependent upon field strength and the distance between the receiver and the transmitter. Since the field strength is dependent upon the distance, if the transmitter is close enough to the receiver, the signal is detected; therefore, the devices are signal strength (field strength) responsive.

9. With respect to the Shyu and Potash 103 rejections, these devices are being modified by the Huish or Trulaske electromagnetic signal detection teaching. Note the common nexus between all the references cited. They all pertain to automatic control sensing means for treadmills.

10. Applicant's Declaration states his opinion that the specification is enabling; however, applicant has failed to provide concrete reasons as to how it is enabling. The examiner doesn't disagree with the scientific theory; rather, the examiner has repeatedly stated that structure is absent from the specification for achieving the claimed results.

Oath/Declaration

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R Crow whose telephone number is 703-308-3398. The examiner can normally be reached on Reg:8:30-6;Off First Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4520 for regular communications and 703-306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

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March 5, 2004



STEPHEN R. CROW
PRIMARY EXAMINER
ART UNIT 332